

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)

Revision of Part 22 and Part 90 of)
the Commission's Rules to)
Facilitate Future Development of)
Paging Systems)

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding.)

RECEIVED
MAR - 1 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WT Docket No. 96-18

DOCKET FILE COPY ORIGINAL

PP Docket No. 93-253

**COMMENTS OF MOBILEMEDIA COMMUNICATIONS, INC.
ON INTERIM LICENSING PROPOSAL**

Gene P. Belardi
Vice President
MobileMedia Communications, Inc.

Jack Richards
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4210

Its Attorneys

Dated: March 1, 1996

No. of Copies rec'd. at 9
UNFILED

TABLE OF CONTENTS

I.	Summary	1
II.	Background	3
III.	Comments	5
A.	The Public is Being Seriously Harmed by the Freeze	6
1.	The Freeze Will Result in the Degradation of Services Vital to the Public	8
2.	Life Page and Other Emergency Services Will be Jeopardized by a Freeze	9
3.	Secondary Licensing is Inadequate to Protect the Public from the Effects of a Freeze	11
B.	The Freeze Should be Lifted Immediately	13
1.	All Pending and New Applications Should be Processed Subject to Existing MX Procedures, if Applicable, and Auctions, if Adopted	15
2.	Nationwide Exclusive Applications Should be Coordinated and Processed	17
IV.	Conclusion	18

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
MAR - 1 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Revision of Part 22 and Part 90 of)	WT Docket No. 96-18
the Commission's Rules to)	
Facilitate Future Development of)	
Paging Systems)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding.)	

**COMMENTS OF MOBILEMEDIA COMMUNICATIONS, INC.
ON INTERIM LICENSING PROPOSAL**

Pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission (the "Commission"), MobileMedia Communications, Inc., the parent company of MobileMedia Paging, Inc. and Mobile Communications Corporation of America (collectively, "MobileMedia/MobileComm"), by its attorneys, is pleased to submit these Comments responsive to the Interim Licensing Proposal in the above-captioned proceeding.

I. Summary.

MobileMedia/MobileComm opposes the Commission's "freeze" on all paging applications. The freeze is extremely ill-advised. It ignores the tremendous growth of the paging industry -- which is expanding at a rate of 35% a year -- and

undoubtedly will cause a serious degradation of service to countless customers throughout the country. The freeze prevents MobileMedia/MobileComm from adding capacity necessary to satisfy the requirements of thousands of new customers being added daily to its systems. It also prohibits MobileMedia/MobileComm from expanding competitive service offerings into new geographic areas, as required by the subscribing public.

The phenomenal growth of the paging industry, which has occurred in the absence of stringent Government oversight, cannot be accommodated under a freeze. Paging licensees must be free to develop and expand their systems in a manner consistent with the public interest and responsive to marketplace requirements. The freeze ignores marketplace realities by grinding the application process to a halt.

The freeze is an artificial, unnecessary Government intrusion into a thriving, productive industry with a proven track record of growth and service to the public. It will cause a substantial degradation of services vital to the public and is unfair to applicants who relied in good faith on the Commission's well established licensing procedures. It is unnecessary, and it is counter-productive. To continue significant growth trends in the paging industry, the Commission must lift the freeze immediately and process all applications in due course.

II. Background.

1. In this proceeding, the Commission proposes fundamental changes in the licensing of paging systems. To set the stage for future geographic area licensing and auctions,¹ the Commission determined to suspend without any prior notice the acceptance of all new applications for paging channels as of the adoption date of the Notice of Proposed Rulemaking (Notice).² Although the Commission indicated that it was "mindful" that an across-the-board freeze on all applications "could impair the ability of existing licensees to make certain necessary modifications to their systems to respond to consumer demand while the rulemaking is pending," a blanket freeze was nevertheless imposed by the Commission. Notice at ¶ 140.

2. Only a few exceptions were carved out from the broad scope of the freeze. Incumbent licensees will be permitted to add sites to existing systems or to

¹ MobileMedia/MobileComm opposes the Commission's Market Area Licensing proposals and will submit separate Comments to that effect during the second phase of this proceeding. MobileMedia/MobileComm, however, does not oppose auctions for applications that are mutually exclusive under the Commission's existing rules.

² The paging industry clearly was "taken by surprise" by the Commission's 11th hour freeze. Rather than issuing some type of public notice prior to imposing the freeze, which might have enabled the industry to minimize its impact, the Commission staff led MobileMedia/MobileComm and others in the paging industry to believe that the Commission did not intend to impose a freeze on all paging applications. Thereafter, on February 1, 1996, the Commission abruptly issued its Sunshine Notice terminating public input on the advisability of a blanket freeze -- before the public had an opportunity to provide any input.

modify existing sites, provided that such additions or modifications do not expand the interference contour of the incumbent's existing system. In the case of Common Carrier Paging (CCP) and Private Carrier Paging (PCP) licensees who have obtained nationwide exclusivity on a paging channel, the Commission will allow applications for additional sites without restrictions. Notice at ¶¶ 140-142.

3. Comment is requested on whether, during the pendency of this proceeding, incumbents should be allowed to file new applications that would expand or modify their existing systems beyond their existing interference contours with such modifications receiving only secondary site authorization. Notice at ¶ 143. With respect to paging applications that were filed prior to the adoption date of the Notice and that remain pending, only such applications as are not mutually exclusive with other applications as of the adoption date of the Notice and for which the relevant period for filing competing applications has expired, will be processed. Upon adoption of an order, the Commission will process or dismiss all remaining pending applications in accordance with the new rules. Notice at ¶ 144.

4. Under the Notice, applications for 931 MHz CCP frequencies that are not mutually exclusive with other applications will be processed, while mutually exclusive 931 MHz applications will be held pending the outcome of this proceeding. Non-mutually exclusive VHF band CCP applications will be processed provided that the window for filing competing applications has closed. Non-mutually exclusive

PCP applications in the 929 MHz band will be processed, but consideration of pending requests for conditional and permanent exclusivity will be postponed while this proceeding is pending. All existing PCP facilities will receive full protection as incumbents, and pending exclusivity requests will be deemed moot.

III. Comments.

5. As recognized in the Notice, the recent dramatic growth of the paging industry has been fueled by increased competition, technological improvements and declining subscription costs. What the Notice fails to point out, however, is that the paging industry also has succeeded in large part because the FCC in the past has declined to insert itself into the paging marketplace. As a direct result of the freeze, however, the natural evolution of the paging industry -- and its ability to provide service as required by the public -- is now being impeded by an artificial regulatory policy that ignores the realities of the marketplace. The freeze fails to acknowledge the necessity of growth for the survival of the paging industry. It will cause a serious degradation of service to existing customers and will prevent competitive service providers from expanding to cover new areas. The freeze grossly disserves the public interest.

A. The Public is Being Seriously Harmed by the Freeze.

6. Growth and consumer demand for paging services have accelerated markedly in the past few years, as noted by the Commission, and that trend is continuing at present. According to recent studies, the paging industry grew by 29% in 1993. In 1994, it grew by an additional 38%, with total customership exceeding 27.3 million. In general, the industry has grown in excess of 35% per year for the last three years. Penetration is predicted to approach at least 15% of the population (or 41.5 million customers) by the year 2000. Notice at ¶ 6.

7. MobileMedia/MobileComm's growth in recent years reflects these industry trends. MobileMedia/MobileComm holds both common carrier and private carrier paging licenses. In the common carrier services, MobileMedia/MobileComm operates thousands of transmitters in the 35 MHz, 43 MHz, 152 MHz, 158 MHz, 454/459 MHz and 931 MHz bands. As a private carrier, MobileMedia/MobileComm operates paging transmitters in the 462 MHz and 929 MHz bands. In the 929 MHz band alone, MobileMedia/MobileComm currently operates more than 1,000 transmitters. Overall, MobileMedia/MobileComm serves more than 4.5 million customers. More than 2 million of these customers were added to MobileMedia/MobileComm's systems within the last year.

8. The phenomenal success of the paging industry -- and of MobileMedia/MobileComm -- has been caused in part because the Commission has permitted systems to grow and expand in the past as necessary to serve the subscribing public. Retention of the freeze will place in question the continued ability of the industry to meet customer demand. It will jeopardize the growth and success of the entire paging market.

9. Between 8,000-10,000 new customers per work day were being added to MobileMedia/MobileComm's paging systems as of the adoption date of the Notice. With a freeze in place, however, MobileMedia/MobileComm will be unable to expand capacity to accommodate new users or to add new geographical service areas in a manner consistent with consumer demand. As indicated below, MobileMedia/MobileComm may be required to turn away customers due to significantly increased loading on existing channels as a result of the freeze.

10. With a freeze, MobileMedia/MobileComm cannot satisfy its obligations as a common carrier under the Commission's rules and the Communications Act of 1934, as amended, to provide service to the public for hire and on demand. MobileMedia/MobileComm cannot continue to provide the required level of service to its existing customer base. Nor can MobileMedia/MobileComm expand to provide service to new geographic areas.

1. **The Freeze will Result in the Degradation of Services Vital to the Public.**

11. Less than one year ago, delays in initiating pages due to system congestion were less than five minutes during peak usage. Today, due in large part to the FCC's backlog in processing applications, the delay is as high as 20-30 minutes in some areas. Under a freeze, channels will become even more congested, delays will escalate, and service quickly will degrade across-the-board.

12. Traffic on some paging channels is particularly sensitive to any degradation or delay. These types of channels must be kept precisely loaded to accommodate emergency communications requirements. The Commission cannot expect paging companies to add thousands of new users daily, under a freeze, without seriously jeopardizing traffic flow on these types of sensitive channels.

13. For instance, MobileMedia/MobileComm currently provide service to a wide range of critical, emergency operations. Hospitals across the country have contractual relationships with MobileMedia/MobileComm for paging services to more than 100,000 units operated by "Emergency Room Response Teams," which require immediate notification of medical emergencies. MobileMedia/MobileComm's paging systems also are used by large oil and gas companies to alert key personnel in the event of refinery and pipeline disasters and to coordinate activities of Petrochemical Response Teams. Although certain other channels may accommodate some additional

congestion, these types of channels must remain readily available for immediate emergency use. Delays in transmitting these types of pages cannot be tolerated under any condition. Yet, with a freeze, MobileMedia/MobileComm will be forced to add large numbers of units on these channels to meet the high demand of other customers while the Commission completes its rulemaking proceeding, conducts auctions and issues licenses -- which will optimistically require at least one year to complete.

2. Life Page and Other Emergency Services Will be Jeopardized by a Freeze.

14. There are numerous other types of paging systems that also are used for emergency and public safety purposes and cannot tolerate delays inherent in a freeze. Nuclear power plants rely on MobileMedia/MobileComm to provide paging services as part of the National Emergency Preparedness Agency (NEPA) plan for nuclear facilities. Police departments across the country use alphanumeric paging systems operated by MobileMedia/MobileComm to satisfy their critical dispatch requirements. PCIA's "Life Page" program, endorsed by Vice President Gore, depends upon fast, reliable paging services provided by MobileMedia/MobileComm and other paging companies to notify organ recipients promptly of the availability of a suitable donor -- or the opportunity for a transplant may be lost forever. The financial community relies on paging services to provide up-to-date stock and economic information. Many federal agencies, including the FBI, the State Department and the Defense Department, rely on privately-owned paging systems

operated by MobileMedia/MobileComm and other paging companies for prompt, reliable communications under emergency conditions.

15. Electric utilities also rely on paging systems to prevent brown-outs or black-outs and to maximize the efficiency of the distribution of electric utility services. Numerous utilities have developed load control systems that depend on MobileMedia/MobileComm and other paging companies to provide paging services to activate and de-activate home appliances, such as water heaters, during peak usage periods. Without prompt, reliable service, these types of systems cannot function as needed to reduce energy consumption and to prevent outages.

16. Paging systems are the communications vehicle of choice for these diverse types of critical operations. These users require prompt, reliable service. They cannot accept the delays and uncertainty caused by a freeze and the resulting massive influx of millions of new users crammed onto existing channels.

17. The Commission, too, should find this situation unacceptable from a public policy perspective. As a matter of public safety, the flexibility of paging companies to continue filing applications to provide these essential services must not be impaired by a Commission-ordered freeze. There is no public interest benefit --

including the possibility of additional revenues generated by proposed MTA auctions³ -- that could possibly outweigh the detriment to the public that will be caused by a freeze.

3. Secondary Licensing is Inadequate to Protect the Public from the Effects of a Freeze.

18. In the Notice, the Commission proposes to allow incumbents to file new applications that would expand or modify their existing systems beyond their existing interference contours subject to secondary site authorization. Secondary site authorization, however, is unacceptable for reliable paging operations. It is certainly unacceptable for all of the Emergency Room Response Teams, Petrochemical Response Teams, Police Departments and other emergency users described above.

19. Secondary operations may not cause interference to operations authorized later on a primary basis as a result of the proposed MTA auctions, and they are not protected from interference from such primary operations. Secondary status is unreliable and insufficient to allow for system growth and expansion. Neither consumers nor lenders will accept secondary status as a basis to do business with a paging company.

³ As indicated previously, MobileMedia/MobileComm does not oppose auctions for paging applications using existing rules governing mutual exclusivity.

20. A secondary site cannot simply be "dropped" in isolation in the event that another company later buys rights to the area in question at auction. Because customers require continuous coverage while traveling across regions served by multiple sites, secondary status at any one site in the system would, in effect, convert the entire system to secondary status. Arguably, every customer contract involving the provision of service on a system utilizing a secondary site would then require a disclaimer to the effect "service may be discontinued without notice at any time!!!" This is hardly the basis upon which the paging industry can continue to grow and expand at its current 35% rate.

21. Paging customers do not buy sites -- they buy service. Reliable service cannot be rendered on a secondary basis. To succeed in the paging market, reliable service must be rendered across-the-board to all customers from all sites. Secondary status at one site would cripple the entire system.

22. Secondary licensing will be extremely disruptive to established, stabilized services provided to millions of customers. It will not ameliorate the effects of the freeze.

B. The Freeze Should be Lifted Immediately.

23. Throughout the history of the Commission's regulation of the paging industry, to our knowledge, the Commission has never before seen fit to impose a blanket freeze on the processing of common carrier applications. Procedures to resolve mutually exclusive ("MX") applications have been used by the Commission for years. They have been adequate in the past to allow for continued growth of the paging industry and the provision of expanded service to the public in accordance with a CCP licensee's legal obligations. Under the freeze, however, CCP licensees cannot grow and expand their service offerings as necessary to satisfy those requirements.

24. The Notice states that "it is [the Commission's] desire to allow incumbent licensees to continue operating their businesses and meeting public demand for paging services during this rulemaking." Notice at ¶ 120. This is impossible, however, with a freeze. Paging systems must grow and expand -- both geographically and in spectrum capacity -- in order serve consumer demands.

25. For example, retail outlets across the country regularly add stores and expect MobileMedia/MobileComm to add stations to provide service to employees and customers of those stores. Other customers travel widely and expect to receive coverage throughout all areas. Likewise, interexchange carriers have reseller

agreements with MobileMedia/MobileComm to provide ubiquitous geographic coverage on demand. None of these types of service contracts can be honored unless MobileMedia/MobileComm maintains an ability to file applications at the Commission to expand and provide service to new geographic areas.⁴

26. MobileMedia/MobileComm also is required to add capacity to serve additional customers within existing markets. Most of the growth in the paging industry, in fact, comes from existing markets. With the industry growing at a rate of 35% a year, additional new capacity is needed to continue providing a corresponding level of service within existing markets. The freeze prevents MobileMedia/MobileComm and others from expanding capacity on their systems as necessary to meet consumer demand.

27. At a minimum, continuation of the freeze will cause:

- an immediate, noticeable degradation of service to existing users;
- abrupt changes in the marketing and business development plans for systems across the country;
- cut-backs on expansion plans for existing systems;

⁴ These contracts contain no provisions for secondary service. Paging operators could incur significant liability for the discontinuance of existing service.

- widescale revisions of existing contracts with customers and carriers; and
- disruption of service to existing customers.

1. All Pending and New Applications Should be Processed Subject to Existing MX Procedures, if Applicable, and Auctions, if Adopted.

28. The Commission indicates that it will process paging applications filed prior to February 8, 1996, the adoption date of the Notice, provided that (i) they are not mutually exclusive with other applications as of the adoption date, and (ii) the relevant period for filing competing applications has expired as of the adoption date. Processing of mutually-exclusive pending applications and applications for which the relevant period for filing competing applications has not expired will be held in abeyance until the conclusion of this proceeding.

29. In other words, rather than processing in due course all applications "in the pipeline," the Commission arbitrarily chose the adoption date of the Notice as a cut-off period. Because of the recent Government furloughs and shutdowns due to weather, the actual cut-off date for CCP applications is closer to early December, 1995. Due to the volume of pending applications and the time required for the Commission to develop a computer algorithm to handle processing of these applications, however, even the applications listed on a December 1995 Public Notice

were actually filed in October of 1995. In fact, until January, 1996, only a small percentage of the 931 MHz CCP applications that had been pending for a year or more had actually been processed by the Commission. This intolerable backlog is exacerbated by the freeze.

30. Granting only applications cleared for processing as of the adoption date of the Notice is unfair to all applicants whose applications are half-way through the Commission's lengthy licensing processes. All pending applications and new non-MX applications should be processed in due course under the existing rules. The relevant period for filing competing applications should be permitted to run for all applications filed before the adoption date of the Notice or thereafter. MX procedures already in place for common carrier channels, coupled with auctions if ultimately adopted in this proceeding, should be used to resolve any conflicts.

31. The freeze should be lifted -- especially for shared channels where no mutual exclusivity exists. The Commission has advanced no meaningful rationale to deny licensees on congested, shared channels the ability to add new sites and frequencies. Indeed, the freeze should be lifted at least in every instance where the frequencies at issue are not usable at a proposed site by a new applicant on an exclusive basis. When spectrum is unlikely to be of material value to anyone else (e.g., where the Commission's interference protection parameters effectively prevent

new applications from being filed), existing licensees should be permitted to expand by adding new sites and frequencies.

2. **Nationwide Exclusive Applications Should be Coordinated and Processed.**

32. Under the freeze, only additions or modifications that do not expand the interference contour of the incumbent's existing system are permitted. In the case of CCP and PCP licensees who have obtained nationwide exclusivity on a paging channel, the Commission indicated that it will allow applications for additional sites without restrictions. Notice at ¶ 142.

33. Based on instructions from the Commission, however, PCIA is not coordinating and forwarding to the Commission applications for additional sites by PCP licensees with nationwide exclusivity. It is essential that these applications be coordinated and immediately forwarded to the Commission. Alternatively, nationwide licensees should be permitted to buildout their exclusive assignments (while protecting any existing incumbent exclusive licensees) upon direct notification to the Commission.

IV. Conclusion.

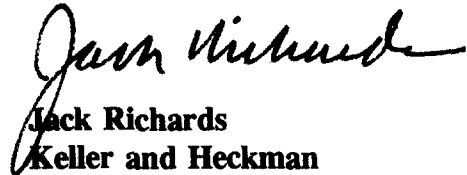
34. Due in part to the Commission's unstated policy of "benign neglect," the paging industry in recent years has been a huge success. Increased competition, new technological improvements, declining customer costs and a 35% growth rate have all been possible because the Commission has allowed the marketplace to grow and expand unfettered by unnecessary Government intrusion. Imposition of a Commission-ordered freeze, however, will grind this long history of progress to a halt. Paging companies will be unable to provide the level of service demanded by the public. Existing systems will be unable to add capacity or to expand to serve new areas. Quality of service to the public will quickly degrade.

35. The freeze is unfair to applicants who relied in good faith on the Commission's well-established licensing procedures. It is unnecessary and counterproductive. It grossly disserves the public.

WHEREFORE, THE PREMISES CONSIDERED, MobileMedia/

MobileComm request that the Commission act in a manner consistent with the views expressed herein and immediately lift the freeze or take such other action as may minimize the adverse impact of the freeze on MobileMedia/MobileComm and the public it serves.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack Richards", written in a cursive style.

**Jack Richards
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001
(202) 434-4210**

**Gene P. Belardi
Vice President
MobileMedia Communications, Inc.
2101 Wilson Boulevard, Suite 935
Arlington, Virginia 22201
(703) 312-5152**

CERTIFICATE OF SERVICE

I, Jennifer M. Cardin, a legal secretary at the law firm of Keller and Heckman,
hereby certify that on this 1st day of March, 1996, copies of **COMMENTS OF
MOBILEMEDIA COMMUNICATIONS, INC. ON INTERIM LICENSING PROPOSAL**
were hand-carried to the following individuals:

The Honorable Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

The Honorable Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

The Honorable Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

The Honorable James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

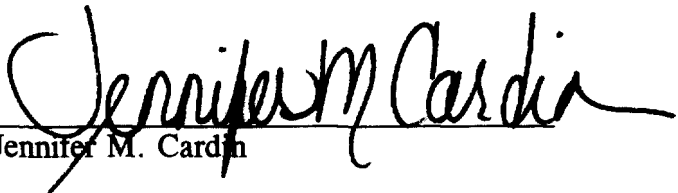
Mr. Rudolfo M. Baca
Legal Advisor to Commissioner Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Susan Toller
Legal Advisor to Commissioner Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Lisa Smith
Senior Legal Advisor to Commissioner Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Jackie Chorney
Legal Assistant to Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W., Room 838G
Washington, D.C. 20554

Mr. David Siddall
Legal Advisor to Commissioner Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554


Jennifer M. Cardin